

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. ~~100~~ 3

FRANCISCO ROMERO,

Petitioner,

against

INTERNATIONAL TERMINAL OPERATING CO., COM-
PANIA TRANSATLANTICA, also known as SPANISH
LINE and GARCIA & DIAZ, INC., and QUIN LUMBER
CO., INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**BRIEF FOR RESPONDENT INTERNATIONAL
TERMINAL OPERATING CO. IN
OPPOSITION**

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Opinions Below

The opinion of the District Court is reported in 142 F.
Supp. 570. The opinion of the Court of Appeals for the
Second Circuit has not yet been officially reported.

Question Presented

The only question raised upon appeal as against respondent International Terminal Operating Co. (hereinafter referred to as International) is whether, in an action brought on the civil side of the District Court, the District Court had jurisdiction of the action although there was no diversity of citizenship between plaintiff and all defendants.

Statement

Petitioner seeks to review the judgment of the Court of Appeals which affirmed the judgment of the District Court dismissing the complaint as to all respondents.

Plaintiff, a seaman aboard the S.S. Guadalupe, brought this action on the civil side against four defendants, alleging the following causes of action in his amended complaint:

1. Under the provisions of the Jones Act and the general maritime law against the defendants Compania Transatlantica (hereinafter referred to as Spanish Line) and Garcia & Diaz, Inc.
2. Under the general maritime law for maintenance and cure against Spanish Line and Garcia & Diaz.
3. In negligence against defendant International.
4. In negligence against defendant Quin Lumber Co. Inc. (hereinafter referred to as Quin).

Plaintiff was injured while performing his duties aboard the S.S. Guadalupe at Pier No. 2, Hoboken, New Jersey on or about May 12, 1954 (197a-206a).

It was stipulated by all parties that (1) plaintiff is a subject of Spain; (2) the Spanish Line is a Spanish corporation; (3) Garcia & Diaz is a New York corporation; (4) defendant International is a Delaware corporation.

(5) defendant Quin is a New York corporation; (6) the S.S. Guadalupe was owned by the Spanish Line; (7) the S.S. Guadalupe was registered under the Spanish flag; (8) the voyage of the S.S. Guadalupe started from Spain for various ports; (9) plaintiff was employed by the Spanish Line aboard the S.S. Guadalupe; (10) defendant Quin was an independent contractor hired by Garcia & Diaz to install cargo fittings aboard the S.S. Guadalupe; and (11) defendant International had a contract with Garcia & Diaz to load cargo (2a-4a, 10a-12a, 14a, 23a).

Testimony was taken on two issues: (1) management, operation and control of the S.S. Guadalupe on May 12, 1954, and (2) as to the contract under which the plaintiff was a crew member on the S.S. Guadalupe on May 12, 1954 (248a-251a).

The Court found that Garcia & Diaz did not have management, operation and control of the vessel (249a) and that plaintiff had certain rights against the Spanish Line by way of pension for life and for maintenance and cure (250a-251a).

On motion by each of the defendants for a dismissal of the complaint on the ground of lack of jurisdiction of the subject matter (194a) and upon the refusal of the plaintiff to amend his complaint and proceed upon diversity jurisdiction at law against the defendants Garcia & Diaz, International and Quin (189) or to proceed by libel in admiralty against said defendants (190a), the Court dismissed the complaint for the reasons stated in his opinion (251a-252a).

POINT I

The complaint was properly dismissed as against the defendant International Terminal Operating Co.

The jurisdiction of the District Court of the defendant International was predicated upon diversity of citizenship (28 U.S.C.A. 1332).

In order for a Federal Court to have jurisdiction for diversity of citizenship, all of the parties on one side must be diverse from all of the parties on the other side.

Treinies v. Sunshine Mining Co., 308 U. S. 66, 71;
Camp v. Gress, 250 U. S. 308, 312;
Strawbridge v. Curtis, 3 Cranch. 267.

Both plaintiff and defendant Spanish Line were Spanish citizens. Since the District Court dismissed plaintiff's action against the Spanish Line under the Jones Act upon the authority of *Gambera v. Bergoty*, 2 Cir., 132 F. 2d 414, cert. den. 319 U. S. 742 (251a, 252a) and the plaintiff elected to retain the Spanish Line as a party defendant with respect to the action under the general maritime law, the District Court had no jurisdiction as there was no diversity of citizenship.

In any event, since the plaintiff and defendant Spanish Line were aliens, and since the action was brought on the civil side of the court, the District Court properly held that it had no jurisdiction of the subject matter of this action even though some of the defendants were not aliens.

Cunard S. S. Co. v. Smith (C.C.A. 2), 255 Fed. 846, 848;

Ex Parte Edelstein (C.C.A. 2), 30 Fed. (2d) 636, 638;

Tsitsinakis v. Simpson, Spence & Young, (S.D.N.Y.), 90 Fed. Supp. 578.

POINT II

The petition and brief of petitioner present no issues which should be reviewed by this Court.

The judgments of the District Court and Court of Appeals for the Second Circuit are correct.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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Of Counsel:

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